

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JIMMIE T. DEAN, ) Civil Case No. C16-1821RSL

**Plaintiff,**

V.

## KING COUNTY METROPOLITAN (METRO) TRANSIT SYSTEM, et al.,

## Defendants

Civil Case No. C16-1821RSL

## **ORDER GRANTING KING COUNTY'S MOTION TO DISMISS AND GRANTING LEAVE TO AMEND**

This matter comes before the Court on the King County defendants' "Motion to Dismiss  
failure to State a Claim on Which Relief Can be Granted." Dkt. # 13. Plaintiff alleges that he  
wrongfully terminated from his job with King County Metro even though he was  
performing adequately. He infers that he must have been discriminated against "for some  
allowable reason" and postulates that his employer and/or supervisor resented having to rehire  
him after he took a medical leave of absence. Dkt. # 4 at 3-4. Plaintiff's complaint is titled  
"Complaint for Wrongful Employment Termination Violation of Title VII and Employment  
Discrimination." Dkt. # 4 at 1.

The King County defendants argue that plaintiff is asserting only a Title VII claim and that the claim fails as a matter of law because (1) plaintiff has not affirmatively plead that he exhausted his administrative remedies and (2) the allegations do not give rise to a plausible

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1 inference of liability.<sup>1</sup> Defendants' first argument is not well taken. Failure to exhaust is an  
2 affirmative defense that defendant must assert and prove. Miles v. Bellfontaine Habilitation Ctr.,  
3 481 F.3d 1106, 1107 (9th Cir. 2007). Although plaintiff has the ultimate burden of establishing  
4 that he exhausted his administrative remedies (or that defendants waived or are otherwise  
5 estopped from insisting on exhaustion), the exhaustion issue cannot be resolved in the context of  
6 this motion to dismiss.

7 Nevertheless, plaintiff's allegations are insufficient in that they do not give rise to a  
8 reasonable inference of liability and/or do not adequately apprise King County of the nature of  
9 his claims and the grounds on which they are asserted. The question for the Court on a motion to  
10 dismiss is whether the facts alleged in the complaint sufficiently state a "plausible" ground for  
11 relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

12 A claim is facially plausible when the plaintiff pleads factual content that allows  
13 the court to draw the reasonable inference that the defendant is liable for the  
14 misconduct alleged. Plausibility requires pleading facts, as opposed to conclusory  
15 allegations or the formulaic recitation of elements of a cause of action, and must  
16 rise above the mere conceivability or possibility of unlawful conduct that entitles  
17 the pleader to relief. Factual allegations must be enough to raise a right to relief  
18 above the speculative level. Where a complaint pleads facts that are merely  
19 consistent with a defendant's liability, it stops short of the line between possibility  
20 and plausibility of entitlement to relief. Nor is it enough that the complaint is  
21 factually neutral; rather, it must be factually suggestive.

22  
Somers v. Apple, Inc., 729 F.3d 953, 959-60 (9th Cir. 2013) (internal quotation marks and  
23 citations omitted). As currently pled, plaintiff's Title VII claim is fatally flawed. Plaintiff has not  
24 alleged that he is a member of a protected class and has therefore failed to allege facts from which one  
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27       <sup>1</sup> The County's motion was noted for consideration on June 2, 2017. On May 30, 2017, plaintiff  
28 filed a one-page response indicating that he is proceeding pro se, that motions to dismiss are disfavored,  
29 and that he is working on an amended answer. Dkt. # 17. During the past three weeks, plaintiff  
30 contacted chambers at least twice to reiterate that he intended to file a more complete response. The  
31 stated dates for filing have come and gone, however, and no further response has been submitted.

1 could reasonably infer that he was discriminated against because of his race, color, religion, sex, or  
2 national origin. 42 U.S.C. § 2000e-2.

3 Whether a Title VII claim is the only cause of action asserted in this litigation is difficult to  
4 discern, however. The title of the complaint uses the generic phrases “wrongful termination” and  
5 “employment discrimination” in addition to the reference to Title VII. Plaintiff may be asserting a state  
6 law claim for wrongful termination and/or a state or federal claim of disability discrimination/retaliation,  
7 but it is not clear from the record. The Court finds that the King County defendants are entitled to a  
8 more definite statement regarding the nature of the claim(s) against them and the facts on which the  
9 claim(s) rest.

10 For all of the foregoing reasons, plaintiff’s claims against the King County defendants are hereby  
11 DISMISSED. Plaintiff is granted leave to amend his complaint to allege additional facts related to the  
12 King County defendants. Federal Rule of Civil Procedure 8(a)(2) requires “a short and plain statement  
13 of the claim showing that the pleader is entitled to relief.” Whether plaintiff can assert a plausible claim  
14 for relief against his employer will depend on whether he can allege facts from which one could  
15 reasonably infer that King County could be liable under state or federal law. Plaintiff is hereby  
16 ORDERED to file on or before **July 28, 2017**, an amended complaint which clearly and concisely  
17 identifies the acts of which King County and/or King County Metro is accused (including  
18 specific allegations regarding his employer’s motivation in terminating his employment) and  
19 how those acts violated plaintiff’s legal rights. The key to filing an acceptable amended  
20 complaint will be providing enough facts in support of the legal claims asserted that King  
21 County (and the Court) can discern the nature and plausibility of plaintiff’s claims. The amended  
22 complaint will completely replace the original and should be a self-contained statement of  
23 plaintiff’s claims.

1 Defendants need not respond to the complaint filed on November 29, 2016. The Clerk of  
2 Court is directed to place this Order Requiring More Definite Statement on the Court's calendar  
3 for consideration on Friday, July 28, 2017.

4

5 Dated this 30th day of June, 2017.

6 Robert S. Lasnik

7 Robert S. Lasnik  
8 United States District Judge